

ARKANSAS SUPREME COURT

No. CR 06-1178

NOT DESIGNATED FOR PUBLICATION

CLAYBURN C. MITCHELL, JR.
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered December 7, 2006

PRO SE MOTION FOR BELATED
APPEAL OF ORDER [CIRCUIT
COURT OF PULASKI COUNTY, CR
86-2754, HON. WILLARD PROCTOR,
JUDGE]

MOTION DENIED.

PER CURIAM

In 1988, petitioner Clayburn C. Mitchell, Jr., was found guilty of kidnapping, rape, theft of property, and aggravated robbery. An aggregate term of life imprisonment was imposed. We affirmed. *Mitchell v. State*, CR 89-47 (Ark. October 9, 1989) (*per curiam*).

In 2005, petitioner filed in the trial court a *pro se* petition for writ of *habeas corpus* pursuant to Act 1780 of the 2001 Acts of Arkansas, codified as Ark. Code Ann. §§ 16-112-201–16-112-207 (Repl. 2006), which was denied by order entered August 3, 2005. On July 27, 2006, nearly one year later, petitioner filed a notice of appeal. When the record on appeal was tendered here, our clerk correctly declined to lodge it because the notice of appeal was not timely filed within thirty days of the date the order was entered as required by Ark. R. App. P.--Civ. 4(a).¹

Petitioner now seeks leave to proceed in this court with an appeal of the order. A petitioner

¹The final day to file a timely notice of appeal from the August 3, 2005, order was September 2, 2005.

has the right to appeal a ruling on a petition for postconviction relief, which includes the dismissal of a petition for writ of *habeas corpus*. See *Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (*per curiam*). With that right goes the responsibility to file a timely notice of appeal within thirty days of the date the order was entered. If a petitioner fails to file a timely notice of appeal, a belated appeal will not be allowed absent a showing by the petitioner of good cause for the failure to comply with proper procedure. *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (*per curiam*).

Petitioner here asserts that he did not receive a copy of the order until June 26, 2006, and thus was unaware within the thirty-day period allowed to file a notice of appeal that relief had been denied. He makes much of his having filed on May 9, 2006, a motion asking the court to act on the *habeas* petition, but the filing of the motion does not constitute proof in itself that petitioner did not receive a copy of the order. In any event, there is no absolute requirement in the *habeas* statute that a circuit clerk forward a copy of the order to the petitioner. Attorneys are charged with knowing the contents of the court's docket. See *Bealer v. State*, 314 Ark. 352, 862 S.W.2d 259 (1993) (*per curiam*). The *pro se* litigant receives no special consideration in this regard and is also responsible for knowing the contents of the docket. See *Gibson v. State*, 298 Ark. 43, 764 S.W.2d 617 (1989); see also *Bragg v. State*, 297 Ark. 348, 760 S.W.2d 878 (1988) (*per curiam*); *Peterson v. State*, 289 Ark. 452, 711 S.W.2d 830 (1986) (*per curiam*); *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984) (*per curiam*); *Thompson v. State*, 280 Ark. 163, 655 S.W.2d 424 (1983) (*per curiam*). As petitioner has failed to show good cause for the failure to file a notice of appeal, the motion for belated appeal is denied.

Motion denied.